

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SCOTT ALAN FALKIEWICZ,

Plaintiff,

CIVIL ACTION NO. 12-14404

v.

DISTRICT JUDGE MARIANNE O. BATTANI

MICHIGAN DEPARTMENT OF  
CORRECTIONS, JEFFREY WOODS,  
DUNCAN MACLAREN, MICHAEL CURLEY,  
SHERRY BURT, DEBRA SCUTT, and  
AMERICAN CORRECTIONAL ASSOCIATION,

MAGISTRATE JUDGE MARK A. RANDON

Defendants.

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**REPORT AND RECOMMENDATION TO GRANT**  
**PLAINTIFF'S MOTION TO WITHDRAW COMPLAINT**

This is a 42 U.S.C. § 1983 prisoner civil rights case. Plaintiff sued several Defendants alleging violations of his First and Eighth Amendment rights. On January 29, 2013, the Michigan Department of Corrections (“MDOC”), Jeffrey Woods, Debra Scutt, Duncan MacLaren and Michael Curley filed a motion for dismissal (Dkt. No. 15). Defendant Sherry Burt filed a motion for dismissal on February 12, 2013 (Dkt. No. 20), and the American Correctional Association (“ACA”) filed a motion to dismiss on February 7, 2013 (Dkt. No. 16). This Magistrate Judge recommended that Defendants’ motions be granted (Dkt. No. 23, 25).

Before the Court is Plaintiff’s motion to withdraw complaint (Dkt. No. 28). Plaintiff says he mistakenly believed jurisdiction was proper in federal court. The only Defendants that the Court recommended dismissal based on Eleventh Amendment immunity – the prohibition of civil rights cases in federal court – are the MDOC and the individual Defendants in their official

capacities (Dkt. No. 25). This Court has jurisdiction over Plaintiff's claims against ACA and the individual Defendants in their personal capacities. Accordingly, this Magistrate Judge **RECOMMENDS** that Plaintiff's motion be **GRANTED**, and his claims against the MDOC and the individual Defendants in their official capacities *only* should be **DISMISSED WITHOUT PREJUDICE**. The Court should rule on Plaintiff's objections to the report and recommendation dismissing ACA (Dkt. No. 23), and the portion of the report and recommendation regarding the individual Defendants in their personal capacities (Dkt. No. 25 at 6-10).<sup>1</sup>

The parties to this action may object to and seek review of this Report and Recommendation within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *See McClanahan v. Comm'r Soc. Sec.*, 474 F.3d 830 (6th Cir. 2006) (internal quotation marks omitted); *Frontier*, 454 F.3d at 596-97. Objections are to be filed through the Case Management/Electronic Case Filing (CM/ECF) system or, if an appropriate exception applies, through the Clerk's Office. *See* E.D. Mich. LR 5.1. A copy of any objections is to be served upon this Magistrate Judge but this does not constitute filing. *See* E.D. Mich. LR 72.1(d)(2). Once an objection is filed, a response is due within fourteen (14) days of service, and a reply brief may be filed within seven (7) days of service of the response. *See* E.D. Mich. LR 72.1(d)(3), (4).

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<sup>1</sup>The time to object to this report and recommendation has passed.

s/Mark A. Randon  
MARK A. RANDON  
UNITED STATES MAGISTRATE JUDGE

Dated: March 19, 2013

*Certificate of Service*

*I hereby certify that a copy of the foregoing document was served on the parties of record on this date, March 19, 2013, electronically and by first class mail.*

*s/Eddrey Butts*  
*Acting Case Manager to Magistrate Judge Mark A. Randon*